



239 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16878-2025
DATE OF DECISION: 02.04.2025

SOHAN SINGH ALIAS JORU ALIAS RAJAN ALIAS SONU
...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.P.S. Sekhon, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 439 Cr.P.C. seeking regular bail in FIR No. 25 dated 10.06.2021 registered under Sections 21, 22-C, 25, 27-B and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Mehal Kalan, District Barnala.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

'Today I along with Constable, Balkaran Singh 837, Contable Sukhchain Singh 244, and Senior Constable Gurpreet Singh 831's on Government Vehicle No. PB-13BA 1844 was present, attMehal Kalan for checking and patrolling for suspected persons. It will be around 4:00 PM when one of my special informer informed me in isolation that Arshdeep Singh alias Arshi son of Jagsir Singh resident of Bakhtagat now Mehal Kalan and



Amritpal Singh son of Manjit Singh resident of Pandori along with their other accomplices also has links with drug smugglers and gangsters in jail. They are involved in Heroin drug dealing on a large scale: Even now they have a consignment of heroin, they have a Swift Dzire car, Even today they are seeking to sell Heroin drug on Swift car or a motorcycle on the link road of Mehal Kalan. If search is made out for them at near Link road of Mehal Kalan then both of them can be caught with heroin. The report is true and reliable. Therefore, the possession and sale of heroin by Arshdeep Singh alias Arshi and Amritpal Singh above said made a crime which meets the 21,25,29/61/85 under the definition of NDPS Act. In this regard, the Chief Officer of Mehal Kalan Police Station was informed about by wireless set of the vehicle and a note was sent to the police party along with a competent investigating officer for further action. Therefore, ruqa was sent against Arshdeep Singh alias Arshi and Amritpal Singh under above said section and was sent by Constable Gurpeet Singh 831 to P.S. Mehal Kalan for registered a case and a case has been registered against them. The case file should be registered and the number file should be informed. I was busy in investigation alongwith fellow employees. Today at Bus Stand Mehal Kalan time 4.30 PM Sd/- Gurbachan Singh SI CIA Barriala Date:-10.6.2021.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that it is a case of no recovery from the petitioner though allegedly contraband (Tramadol Hydrochloride weighing 350 grams) was recovered from co-accused Amritpal Singh on 10.06.2021. He further submits that allegedly contraband (Tramadol Hydrochloride weighing 30 grams) (non-commercial quantity) has been recovered from Iqbal Singh @ Babbu. It is his contention that in addition to above, 50 grams of Heroin and 825



loose intoxicating tables in broken condition has been shown to be recovered from co-accused namely Chand Singh @ Golu.

He has further argued that other co-accused namely Iqbal Singh @ Babbu, Vishesh Kumar, Gurdeep Singh Manna, Vijay Singh Ghuggi, Amritpal Singh Johal, Chand Singh Golu, Arshdeep Singh Arashi have already been released on regular bail by this Court vide separate orders dated 14.09.2021, 11.11.2022, 11.11.2022, 07.08.2023, 07.11.2023, 29.01.2024 and 29.10.2024 respectively i.e. (Annexures P/2 to P/8).

The case of the counsel for the petitioner is that earlier the petitioner was in custody in FIR No. 120 dated 10.06.2022 registered under Sections 21, 25 and 29 of the NDPS Act at P.S. Baghapurana, District Moga and he got regular bail from this Court vide order dated 27.11.2024 passed in CRM-M-50325-2024 and immediately, the petitioner was arrested in this case. Moreso, the investigation in this case is complete as challan stands presented on 13.12.2024 and charges are yet to be framed and total 19 prosecution witnesses have been cited by the prosecution which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in other FIR also but is



not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 6 months and 22 days, and no recovery was effected from the petitioner and was nominated on the basis of the disclosure statement of co-accused, similarly situated co-accused have already been granted concession of bail by this Court and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 13.12.2024 and charges are yet to be framed and total 19 prosecution witnesses have been cited by the prosecution which is sufficient to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

Reliance can be placed upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, **2018(2) R.C.R. (Criminal) 131**, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.”



Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect



or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nimesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”

Therefore, to elucidate further, this Court is conscious of the fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC



98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as **“Baljinder Singh alias Rock vs. State of Punjab”** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

5. **Relief**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove



shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

02.04.2025

anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>